TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5585

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES E. FUSSELL, County Attorney of Leavenworth County, Kansas, Appellants,

vs.

W. B. LOVE, an individual doing business as THE LOVE TRANSFER COMPANY, Weston, Missouri, Appellee.

Appeal From The United States District Court
For The District Of Kansas

Filed March 4, 1957.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Pleas And Proceedings before the Honorable Delmas C. Hill, Judge of the United States District Court for the District of Kansas, presiding in the following entitled cause:

W. B. LOVE, an individual doing business as The Love Transfer Company, Weston, Missouri, Petitioner,

vs.

CHARLES W. PRATT (W. E. Murphy substituted), Director of Alcoholic Beverage Control; Harold R. Fatzer (John Anderson, Jr. substituted) Attorney General of the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas and James E. Fussell, County Attorney of Leavenworth County, Kansas, Defendants.

No.T -1268, Civil.

1] Complaint For Mandatory Injunction.

Comes now Homer Davis, attorney for the above named plaintiff and prays the court for the issuance of a Mandatory Injunction, directed to and against the above named defendants, requiring them to hold a certain shipment of liquor, to-wit: whiskey, seized by the agents and employees of the above named defendant, F. E. Wells, Director, from the above named plaintiff on October 5, 1955, all as more fully set out hereinafter; to require said defendants, and all of them, to hold said shipment in status quo determining the termination of this action and requiring said defendants, and each of them, to return the said shipment of intoxicating liquors,

to-wit: whiskey, to the plaintiff herein and to direct the defendants, and each of them, not to interfere with the plaintiff's possession and movement of such shipment in interstate commerce to its destination. In support of said complaint, your petitioner shows the court:

1. That the plaintiff herein, W. B. Love, is an individual doing business under the firm name and style of the Love Transfer Company. That the main offices of said Transfer Company are located in the town of Weston, State of Missouri; that the said plaintiff is duly licensed and authorized by virtue of the rules and regulations of the Interstate Commerce Commission of the United States Government to engage in the business of a common carrier between certain parts of the State of Missouri and the State of Kansas; that plaintiff is likewise licensed and permitted under the Rules and Regulations of the Corporation Commission of the State of Kansas to engage in the business of a common carrier in certain portions of the State of Kansas; that the plaintiff is likewise authorized by proper permit from the State of Kansas, Corporation Commission, to transport intoxicating liquors within certain portions of the State of Kansas.

2] That on or about October 5, 1955, the plaintiff while engaged in the course of his business as a common carrier, received a shipment of intoxicating liquor, exact description of which is unknown to the petitioner at this time because the defendants and their agents at the time of the seizure herein complained of, confiscated from plaintiff all his records pertaining to said shipment but which knowledge is within the particular control of the defendants herein, from a firm known as Austins, located in the State of Missouri, which firm is licensed and authorized to sell intoxicating liquors, including whiskey; that said shipment of intoxicating liquors was consigned to an Army Officer living and residing on the Fort Leavenworth Military Reservation, which Reservation is under the exclusive control of the United States Government; that shortly after receiving said shipment for interstate transportation from the said Austin Liquor Store in Platte County, Missouri, to the residence of the Army Officer above mentioned whose name is unknown to plaintiff at this time, the agent and employee of the plaintiff, to-wit: - one Richard Winburn, driving one

of the trucks of the plaintiff, proceeded from said Austin's Liquor Store in Platte County, Missouri, across the Missouri River on the Leavenworth Municipal bridge, into and upon Metropolitan Avenue, located North of the city limits of Leavenworth County, Kansas, on which said Metropolitan Avenue lies wholly within the United States Military Reservation at Fort Leavenworth, Kansas; that upon reaching the toll station located on said Metropolitan Avenue, West of the bridge aforesaid, agents and employees of the defendant, F. E. Wells, Acting Director of the Alcoholic Beverage Control of the State of Kansas, arrested the agent of this plaintiff, Richard Winburn, and seized the shipment of intoxicating liquors, to-wit: whiskey being transported by plaintiff in interstate commerce as aforesaid, caused the agent of this plaintiff, Richard Winburn, to be placed in the Leavenworth County Jail, Leavenworth County, Kansas, on said date and have held and taken into their possession as aforesaid, the intoxicating liquors above referred to and refused and failed to restore the same to this plaintiff.

3] That the said shipment of intoxicating liquors as above referred to, was a shipment in interstate commerce from Platte County, Missouri to the United States Military Reservation, Fort Leavenworth, Kansas. That all proper permits, licenses and orders pertaining to the shipment of goods and interstate commerce, including the intoxicating liquors herein referred to, have been complied with by the plaintiff and that the defendant's seizure of such intoxicating liquors is unlawful and without force or authority in law and in direct violation of the provisions of the Constitution of the United States, regulating interstate commerce; that the defendants have no authority or jurisdiction to control, regulate, or restrict the shipment in interstate commerce of intoxicating liquors from the State of Missouri into the United States Military Reservation, Fort Leavenworth, Kansas, and that all acts done by the defendants and their agents as hereinabove set forth are void, illegal and of no force and effect.

Plaintiff further states that he has no adequate remedy at law and that unless such injunction issue as herein requested he will be deprived of his property without due process of law and will suffer irreparable injury and damage.

Wherefore, the plaintiff prays the court for the issuance of a Mandatory Injunction directed by the Clerk of this court to the defendants and each of them, requiring them to hold the shipment of intoxicating liquors seized by the defendants as hereinabove set forth in status quo, pend-
4] ing the termination of this action and requiring the defendants and each of them, to return the shipment of intoxicating liquors seized herein to the plaintiff, W. B. Love, doing business as the Love Transfer Company of Weston, Missouri and to order and direct the defendants, and each of them, to refrain from interfering with the plaintiff, W. B. Love, doing business as the Love Transfer Company, Weston Missouri, a common carrier, movant of such shipment of interstate commerce to its destination, Fort Leavenworth, Kansas, on the United States Military Reservation.

Homer Davis
Attorney for Plaintiff

[Verified.]

Filed Oct. 6, 1955.

5] [Answer.]

Comes now Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas; Harold Fatzer, Attorney General for the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas; and James E. Fussell, County Attorney of Leavenworth County, Kansas, defendants in the above-entitled action and for their answer to the complaint for mandatory injunction filed in said cause admit, allege and deny as follows, to-wit:

First Defense

For their first defense, the defendants herein, and each of them, allege that the complaint for mandatory injunction filed herein shows on its face that it is in reality a suit against the State of Kansas by a citizen of the State of Missouri involving the right of the State of Kansas to exercise its sovereign powers in the enforcement of its criminal statutes, notwithstanding the fact that the State of Kansas

is not named as one of the defendants to the suit. That because, in truth, the suit is brought by a citizen of the State of Missouri against the State of Kansas to restrain its officers from the exercise of its sovereign powers, this court has no jurisdiction over the subject matter.

6] Second Defense

For their second defense, to the complaint for mandatory injunction herein, the defendants, and each of them, allege that the complaint fails to state claims against the defendants, or any of them, upon which relief could be granted.

Third Defense

For their third defense to the complaint for mandatory injunction filed herein, the defendants, and each of them, allege that the plaintiff is estopped to deny the authority of the State Director of Alcoholic Beverage Control of Kansas, and his agents, to regulate and control the shipment of the alcoholic liquors hereinafter described and to seek injunctive relief in this court for the following reasons, to-wit:

1. In applying for and accepting a bonded alcoholic liquor carrier permit the plaintiff has submitted to the jurisdiction of the State Director of Alcoholic Beverage Control of the State of Kansas and has given his consent to the control of such shipments by said agency.

2. By his violation of the law of the State of Kansas relating to the possession and transportion of alcoholic liquor, and the evasion of the Kansas tax on alcoholic liquor within the state, the plaintiff has violated section 130, title 18 USCA and for this reason has no standing in this court to seek equitable relief.

7] Fourth Defense

For their fourth defense to the complaint for mandatory injunction filed herein, the defendants, and each of them, deny each and every material allegation in said complaint contained, except as may be hereinafter expressly admitted or alleged.

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Murphy et al. vs. Love

Fifth Defense

For their fifth defense to the complaint for mandatory injunction filed herein, and for further answer thereto, the defendants, and each of them, admit that agents, as employees of the Alcoholic Beverage Control of Kansas and acting in their official capacity on October 5, 1955, in Leavenworth County, Kansas, seized a certain shipment of alcoholic liquors which, at the time of seizure, were being transported over the western approach of the Leavenworth municipal bridge in a westerly direction by one of the trucks belonging to the plaintiff, and being there and then driven by one Richard Cooper Winburn, an employee of plaintiff. Said shipment of alocholic liquors is described as follows: to-wit:

4 fifths House of Lords Scotch Whisky
12 fifths Hiram Walker Gin
16 fifths Barclay's Gold Label Whiskey
34 fifths McCormick Weston Springs Whiskey

66 bottles, total

Said defendants, and each of them, further admit that the said truck driver, Richard Cooper Winburn, was arrested by the agents aforesaid and that the shipment of alcoholic liquors so seized is now being held in the possession of Arden Rhyne, Sheriff of Leavenworth County, Kansas, pending the proper determination of the question of the lawful disposition of such liquors.

8] For further answer herein the defendants, and each of them, allege that said shipment of alcoholic liquor did not have affixed thereto each mark or stamp showing payment of the Kansas gallonage tax on such liquor as required by law, contrary to the provisions of the Alcoholic Beverage Control Act of Kansas.

That the plaintiff holds a Bonded Alcoholic Liquor Carrier Permit No. 178 issued to him on February 23, 1955, by the State Director of Alcoholic Beverage Control of Kansas. That in his application to obtain such a liquor carrier permit and as a condition of the bond given to the State of Kansas to insure plaintiff's compliance with the

laws of the Alcoholic Beverage Control of this state, plaintiff expressly agreed to well, truthfully and faithfully comply with the provisions of the Kansas Liquor Control Act in all respects and with the Rules and Regulations of the State Director of Alcoholic Beverage Control relating to the transportation of alcoholic liquors. A true and correct copy of the application for Bonded Liquor Carrier Permit executed by W. B. Love on February 5, 1955, the Carrier's Bond approved February 23, 1955, and the Carrier's Permit above referred to are hereto attached marked Exhibits "A", "B", and "C" and made a part hereof. That the truck so intercepted by the Alcoholic Beverage Control Agents and hauling such shipment of alcoholic liquors was registered and licensed by the Kansas Alcoholic Beverage Control and is identified by them as being Truck No. 271.

That the shipment of alcoholic liquor aforesaid was consigned from the Austin Liquor Store of Beverly, Missouri, to a Major B. C. Snow Jr. residing in Fort Leavenworth, Kansas. That neither the consignor nor the consignee were licensees under the Kansas Alcoholic Beverage Control Act nor did either of them maintain a bonded warehouse for the storage of such alcoholic liquors within the State of Kansas.

9] That the truck driver, Richard Cooper Winburn, has been arraigned and is now bound over for trial in the District Court of Leavenworth County, Kansas, on charges of possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas gallonage tax stamps or marks affixed thereto, and with evasion of the Kansas tax upon such liquors contrary to the Kansas Statutes in such cases made and provided.

That the plaintiff herein, as a bonded alcoholic liquor carrier permit holder of the Alcoholic Beverage Control of Kansas, has been cited to appear before the State Director of Alcoholic Beverage Control to show cause why his liquor carrier permit should not be suspended or revoked for violation of the Kansas Alcoholic Beverage Control Act in the possession and transportation of the shipment of alcoholic liquors as is above described.

Having answered, the said defendants, and each of them, pray for an order of this court dismissing this suit for lack

of jurisdiction of the subject matter; or, failing this, for a judgment of the court refusing to grant the mandatory injunction sought herein and finding generally for the defendants, and each of them, and against the plaintiff, and awarding to the defendants their cost herein expended and for such other and further relief as the court may find proper in the premises.

C. C. Linley
Rex L. Culley
Attorney for Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas
Paul E. Wilson
Attorney for Harold Fatzer, Attorney General of the State of Kansas
James E. Fussell
Attorney for Arden Rhyne, Sheriff of Leavenworth County, Kansas, and James E. Fussell, County Attorney of Leavenworth County, Kansas.

10]

Filed Oct. 28, 1955.

11] Exhibit A.

Validated Amounts 5.75 Cashier H

Pay To The Order Of Richard T.Fadley, State Treasurer Topeka, Kansas 1508 Feb 9 1955 Office Of Director Alcoholic Beverage Control Chas. W. Pratt Director* Form ABC 103

Office of Director
of
Alcoholic Beverage Control

Application For Bonded Liquor Carrier Permit
Under Kansas Liquor Control Act

To: State Director of Alcoholic Beverage Control; Topeka, Kansas

*Rubber stamp impression appearing on copy.

The applicant certifies and warrants that the statements and representations made herein are true and correct and are made for the purpose of qualifying as a bonded liquor carrier under the Kansas Liquor Control Act and the issuance of a permit therefor. The applicant consents and agrees that, if any statements or representations are herein found to be false, the director may refuse to issue said permit or may cause such permit to be revoked forthwith at any time.

(Note: Registration Fee of $5.00 Must Accompany this Application)

1. Name of applicant: W. B. Love DBA Love Transfer

2. Individual, co-partnership or corporation: Individual.

3. Name under which you operate: Love Transfer

4. Address: 727 W. Thomas Weston, Platte Missouri.
(Street Number) (City) (County) (State)

5. What transportation facilities do you offer as common carrier? All trucks have closed vans with rear doors that can be locked or sealed.

6. Under what authority do you operate as a common carrier in Kansas? General commodities from Weston, Mo. to K.C. Mo. & K.C. Kans. Leavenworth & Atchinson, Kans. Regular route over highways 45 92 59 and 71 and return. Authority granted March 10, 1952 Route #R3941.

7. If a common carrier operating motor vehicles:

(a) How many vehicles are you operating in or into Kansas? Three.
(b) Do you own such vehicles? Yes.
(c) Do you lease any vehicles? No. If so, how many? ___
(d) Are these vehicles used exclusively by you as a common carrier? Yes.
(e) Will your name and permit number be permanently painted on a permanent part of each motor vehicle used by you to transport alcoholic liquor in or into Kansas? Yes.
(f) If you are operating less than three motor vehicles, or if your name and permit number is not permanently

painted on a permanent part of each motor vehicle used to transport alcoholic liquor, give description of each vehicle as follows:

Make	Year	Engine No.	Wt. Empty	K.C.C. Tag No.
____	____	_____	_____	_____

11-A] 8. Do you agree, if granted a bonded liquor carrier's permit to move or deliver interstate and intrastate shipments of alcoholic liquor only to a licensee authorized to receive the same under the provisions of the Kansas Liquor Control Act and the rules and regulations promulgated thereunder? Yes.

9. Do you agree, if granted a bonded liquor carrier's permit to abide by the provisions of the Kansas Liquor Control Act and the rules and regulations promulgated thereunder in the transportation of alcoholic liquors in or into the state of Kansas? Yes.

W. B. Love
(Signature of Applicant)

Oath

State of Missouri County of Platte ss

W. B. Love, being first duly sworn, upon oath deposes and says: That he is the applicant who makes the above and foregoing application; that he has read and signed the same, knows the contents thereof and that all statements made therein are true.

(Signed) W. B. Love.

(Seal)

Subscribed in my presence and sworn to before me this 5 day of February, 1955.

Roger G. Wilson
(Notary Public)

My commission expires: 3-14-1956

14] Exhibit B.

Power Of Attorney

[Certified Copy.]

The Western Casualty and Surety Company
Home Office - Fort Scott, Kansas

Know all Men by these Presents: That The Western Casualty And Surety Company, of Fort Scott, Kansas, a corporation of the State of Kansas, having its principal office in the city of Fort Scott, Kansas, pursuant to the following By-Law, which was adopted by the Stockholders of the said Company on December 2, 1953, to-wit:

"Section 27. Resident Officers and Attorneys-in-fact. The president, any vice president or the secretary shall have power and authority to appoint resident vice presidents, resident assistant secretaries and attorneys-in-fact, and to give such appointees full power and authority to make, execute and deliver in the name and on behalf of the corporation, bonds, recognizances, contracts of indemnity and other undertakings and writings of obligatory nature, and to affix thereto the corporate seal of the corporation. The president, any vice president or the secretary shall also have power at any time to remove and revoke the authority of any such appointee."

does hereby nominate, constitute and appoint W. B. Cook, of the City of Kansas City, State of Missouri.

its true and lawful agent(s) and attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed: Any and all bonds and undertakings.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Fort Scott, State of Kansas, in their own proper persons.

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

In Witness Whereof, K. H. Mead, Vice-President has hereunto subscribed his name and affixed the corporate seal of the said The Western Casualty And Surety Company, of Fort Scott, Kansas, this 1st day of December, 1954.

(Seal) The Western Casualty And Surety Company
By K. H. Mead/s/
Vice-President

[Verified.]

[The acknowledged power of attorney, dated January 21, 1955, The Western Casualty and Surety Company to John P. Lillig, which appears to be a part of exhibit B, is identical in form with the power of attorney just above with the exception of the language which follows:

"does hereby nominate, constitute and appoint John P. Lillig, of the City of Kansas City, State of Kansas, its true and lawful agent (s) and attorneys(s)-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed: a Carrier's Bond in the penal sum of Five Thousand and no/100 ($5,000.00) Dollars on behalf of W. B. Love dba Love Transfer, in favor of the State of Kansas."

13] Carrier's Bond

Bond No. 207919

Know All Men By These Presents: That we, W. B. Love dba Love Transfer of Weston, County of Platte, State of Missouri, as Principal, and The Western Casualty And Surety Company, a corporation organized and existing under and by virtue of the laws of the state of Kansas and duly licensed to do business in the State of Kansas, as Surety, are held and firmly bound unto the State Director of Alcoholic Beverage Control for and on behalf of the State of Kansas in the penal sum of Five Thousand Dollars, for the payment of which, we bind ourselves, our heirs, executors, administrators, successors

and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 21st day of January, 1955

The condition of this obligation is such that

Whereas, the said Principal is a common carrier authorized under the laws of Kansas to engage in the transportation of merchandise in Kansas and said Principal has been designated by the State Director of Alcoholic Beverage Control of the State of Kansas as a carrier of alcoholic liquors.

Now, Therefore, if the said principal shall well and truly comply with the provisions of the Kansas Liquor Control Act in all respects, and shall faithfully comply with the rules and regulations of the State Director of Alcoholic Beverage Control relating to the transportation of alcoholic liquors, then this obligation shall be null and void; otherwise to remain in full force and effect: Provided, however, That if the surety shall so elect, this bond may be cancelled at any time by the surety giving sixty (60)days notice in writing addressed to and receipted therefor by the State Director of Alcoholic Beverage Control and to the principal named herein, and this bond shall be deemed cancelled at the expiration of the said sixty (60) days.

Witness our hands and seals the day and year first above written.

W. B. Love
Principal.
The Western Casualty And Surety
Company, Surety.
Seal By W. B. Cook
(If signed by attorney in fact
attach copy of written authority)

John P. Lillig
Kansas Resident Agent (Surety)

The above and foregoing bond approved this 23rd day of February, 1955

State Director Alcoholic Beverage Control
Seal By Chas. W. Pratt
Director.

17] Proposed Agreed Statement Of Facts.

1. Lands on which Fort Leavenworth is situated were acquired by the United States in the Louisiana Purchase of 1803.

2. Fort Leavenworth was established as a military post in 1827.

3. The Fort Leavenworth Military Reservation was created by executive order on October 10, 1854.

4. The State of Kansas was organized into a territory by act of Congress approved May 30, 1858.

5. The State of Kansas was admitted as a state in the union on equal footing with the original states January 29, 1861, all as evidenced by the Act of Congress of _____. A true copy is attached hereto and made a part hereof marked Exhibit "A", being 12 Stat. at Large 126.

6. By act approved July 20, 1868, Congress authorized the sale of twenty (20) acres of land from the southeast portion of the Fort Leavenworth Military Reservation to the Leavenworth Coal Company. Said act directed the Secretary of the Interior to issue a patent for the said twenty (20) acres and also to grant to the company, its successors and assigns, the exclusive right to mine all of the coal underlining the remaining lands comprising the military reservation aforesaid, all as evidenced by a true copy of said act attached hereto, made a part hereof and marked Exhibit "B".

18] 7. By act approved July 27, 1868, Congress set apart a strip of land one hundred (100) feet wide along the south boundary of Fort Leavenworth Military Reservation, extending from the Missouri River to the western boundary thereof for the perpetual and extensive use as a public road. Said road to be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops or mails of the United States, all as evidenced by a true copy of said act attached hereto, made a part hereof and marked Exhibit "C".

8. By patent dated December 28, 1868, the United States conveyed to the Leavenworth Coal Company "The aforesaid twenty (20) acres and fee simple, with the privilege of mining on the terms and conditions aforesaid" for "all coal underlining the remaining lands comprised in the deed of said act in the military reservation aforesaid for a period of sixteen (16) years from the date of said act on the 20th day of July, 1868". A copy of said patent is hereto attached, marked Exhibit "D" and made a part hereof.

* * * * *

10. Early in the year 1955 a new Municipal Leavenworth Toll Bridge was opened and the old Fort Leavenworth Military Reservation Bridge was closed by agreement.

11. The western approach to the new municipal bridge crosses a portion of the twenty (20) acre tract deeded to the Leavenworth Coal Company by the patent described in Paragraph 8 above and across the 100' strip which was subject of the easement in Paragraph 7.

* * * * *

19] 13. Attached hereto marked Exhibit "F" and made a part hereof is a map of the Fort Leavenworth Military Reservation prepared by the office of the Constructing Quartermaster on September 19, 1930, and was obtained from the Judge Advocate of Fort Leavenworth.

* * * * *

20] 17. At all times herein material, one W. B. Love, doing business as under the firm name and style of the Love Transfer Company of Weston, Missouri, operated a common carrier business transporting property by motor vehicle from certain parts of the State of Missouri to certain parts of the State of Kansas. The said W. B. Love was duly licensed under the Interstate Commerce Commission's rules and regulations and under the Kansas Corporation Commission's rules and regulations.

18. The said W. B. Love, Plaintiff, doing business as Love Transfer Company (Weston, Missouri) holds and was operating under on October 5, 1955, and prior thereto permit

of State of Kansas "Bonded Alcoholic Liquor Carrier Permit No. 178 issued February 23, 1955, by the Director of the Alcoholic Beverage Control of Kansas. A copy is attached hereto marked Exhibit "J" and made a part hereof, and also a true copy of the duly executed and verified application of W. B. Love for a bonded liquor carrier's permit under the Kansas Liquor Control Act, and a true copy of a duly executed carrier's bond offered by the said Love in support of said application.

21] 19. At 9:00 a.m. on October 5, 1955, Agents of the Kansas Alcoholic Beverage Control, at a point on the western approach to the new municipal bridge aforesaid which was within the twenty (20) acre tract originally deeded to the Leavenworth Coal Company in 1868 as described and on the 100' strip referred to in Paragraph 7 hereinabove, intercepted a 1951, 1/2 ton International truck bearing 1955 Missouri license plates No. MO 241,867; Fort Leavenworth No. 6087; KCC No. 59,707; KCC No. 50,472; and Alcoholic Beverage Control permit card No. 178, dated February 23, 1955; owned by the Love Transfer Company of Weston, Missouri, which had proceeded in a westerly direction across the new municipal bridge to the point of interception and at that time was hauling, among other things, the following described alcoholic liquor consigned from the Austin Liquor Store of Beverly, Missouri, and consigned to Major B. C. Snow, Jr., of 322-4 Cody Lane, Fort Leavenworth, Kansas, to-wit:

4	fifths House of Lords Scotch Whisky
12	fifths Hiram Walker Gin
16	fifths Barclay's Gold Label Whiskey
34	fifths McCormick Weston Springs Whiskey

66 bottles total

Said alcoholic liquor did not have affixed thereon each mark or stamp showing payment of the Kansas Gallonage Tax. That the State of Missouri Sales Tax had been paid on the alcoholic liquors seized from Plaintiff on October 5, 1955, prior to said seizure and prior to said liquors leaving the State of Missouri. That all required Excise or Inspection Stamps or Labels required as to gallonage under Regulation #7 of the Missouri Department of Liquor Control had been properly purchased and affixed to the alcoholic liquors seized from

Plaintiff prior to such seizure on October 5, 1955. That the Director of Alcoholic Beverage Control, Chas. W. Pratt, is properly and legally appointed under the Kansas Statute. That the Agents making the arrest were the legally and qualified agents of the said Director of Alcoholic Beverage Control.

22] 20. Immediately after the interception, as is above set out, the Alcoholic Beverage Control agents arrested one Richard Cooper Winburn, the driver of the Love Transfer truck in question, and seized the alcoholic liquor above described, taking both the driver and the alcoholic liquor to the office of the Sheriff of Leavenworth County, Kansas. That on October 5, 1955, Richard Cooper Winburn was the duly authorized, acting agent and employee of the Plaintiff and at such time was acting in such capacity. That invoices, Bills of Lading and Freight Tickets accompanied the shipment of alcoholic liquors enroute from Austin's Liquor Store, Beverly, Missouri, to Major B. C. Snow, Jr., 322 - 4 Cody Lane, Fort Leavenworth, Kansas, on October 5, 1955, at the time of such seizure from Plaintiff's truck. The same are attached hereto marked Exhibit "K" and made a part hereof.

21. Truck driver Winburn was charged with the possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas tax stamps thereon in violation of Section 41-407 of the Kansas Alcoholic Beverage Control Act and with evasion of the Kansas tax upon the liquors above described. Winburn has been arraigned and is now awaiting trial in the District Court of Leavenworth County, Kansas.

22. On October 20, 1955, the said W. B. Love, doing business as the Love Transfer Company of Weston, Missouri, was cited to appear on November 17, 1955, before the State Director of the Alcoholic Beverage Control of Kansas to show cause why his permit as a Bonded Alcoholic Liquor Carrier should not be suspended or revoked for violation of sections 41-407 and 41-408 of the Kansas Alcoholic Beverage Control Act, said hearing not having been held at this time.

23] 23. The above stipulation is without prejudice to the right of either party to introduce additional evidence in said case.

Rex Culley
James L. Galle
Attorneys for Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas.
Paul E. Wilson
Attorney for Harold Fatzer, Attorney General of the State of Kansas.
Paul E. Wilson
Attorney for Arden Rhyne, Sheriff of Leavenworth County, Kansas, and James E. Fussell, County Attorney of Leavenworth County, Kansas
Homer Davis
Attorney for Plaintiff

Filed Feb. 10, 1956.

Exhibit A.

Chap. XX. -- An Act for the Admission of Kansas into the Union

Whereas the people of the Territory of Kansas, by their representatives in Convention assembled, at Wyandott, in said Territory, on the twenty-ninth day of July, one thousand eight hundred and fifty-nine, did form for themselves a constitution and State government, republican in form, which was ratified and adopted by the people at an election held for that purpose on Tuesday, the fourth day of October, one thousand eight hundred and fifty-nine, and the said Convention has, in their name and behalf, asked the Congress of the United States to admit the said Territory into the Union as a State, on an equal footing with the other States: Therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Kansas shall be, and is hereby declared to be, one of the United States of America, and admitted into the Union on an equal footing with the original States in all

respects whatever. And the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence West on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning: Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent to make if this act had never passed.

Sec. 2. And be it further enacted, That until the next general apportionment of Representatives the State of Kansas shall be entitled to one Representative in the House of Representatives of the United States.

Sec. 3. And be it further enacted, That nothing in this act shall be construed as an assent by Congress to all or to any of the propositions or claims contained in the ordinance of said constitution of the people of Kansas, or in the resolutions thereto attached; but the following propositions are hereby offered to the said people of Kansas for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Kansas, to wit: First, That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections or any part thereof has

been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools. Second, That seventy-two sections of land shall be set apart and reserved for the use and support of a State University, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land Office, and to be appropriated and applied in such manner as the Legislature of said State may prescribe for the purpose aforesaid, but for no other purpose. Third, That ten entire sections of land, to be selected by the Governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the Legislature thereof. Fourth, That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the Governor thereof within one year after the admission of said State, and when so selected to be used or disposed of on such terms, conditions, and regulations as the Legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. Fifth, That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, or for other purposes, as the Legislature shall direct; Provided, That the foregoing propositions hereinbefore offered are on the condition that the people of Kansas shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof. Sixth, And that the said State shall never tax the lands or the property of the United States in said State: Provided, however, That in case any of the lands herein granted to the State of Kansas have heretofore been confirmed to the Territory of Kansas for the purposes specified in this act, the amount so

confirmed shall be deducted from the quantity specified in this act.

Sec.4 And be it further enacted, That from and after the admission of the State of Kansas, as hereinbefore provided, all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within that State as in other States of the Union; and the said State is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Minnesota, shall be established; the judge, attorney, and marshal of the United States for the said district of Kansas shall reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Minnesota; and in all cases of appeal or writ of error heretofore prosecuted, and now pending in the Supreme Court of the United States, upon any record from the supreme court of Kansas Territory, the mandate of execution or order of further proceedings shall be directed by the Supreme Court of the United States to the district court of the United States for the district of Kansas, or to the supreme court of the State of Kansas, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Kansas Territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

Sec. 5. And be it further enacted, That the judge of the district court for the district of Kansas shall hold two regular terms of the said court annually, at the seat of government of the said State, to commence on the second Mondays of April and October in each year.

Approved, January 29, 1861.

Exhibit B.

Chap. CXCIX. -- An Act to authorize the Sale of twenty Acres of Land in the military Reservation at Fort Leavenworth, Kansas.

Whereas the Secretary of War, in behalf of the United States and in accordance with the previous practice of the War Department, on the thirteenth day of November, in the year eighteen hundred and sixty, did execute to Samuel Denman, William H. Russell, and Thomas Ewing, Junior, and their assigns, a lease of twenty acres of land in the military reserve at Fort Leavenworth, State of Kansas, for the term of sixteen years thereafter, with a preference to them of an extension of the term, and with the exclusive right to mine for coal under the lands of said military reserve; and whereas the said lessees and their assigns accepted the said lease, and upon the faith thereof have prosecuted their mining operations under many difficulties at great expense, and have finally succeeded in striking the deep coal beds of that geological region after having expended their entire capital to the amount of forty thousand dollars; and whereas it is now discovered that the said lease is invalid because the Secretary of War was unauthorized in law to make the same, by reason of which the said lessees are deprived of their right to proceed, and are threatened with the total loss of their money, and are without redress; and whereas in view of the incalculable benefit to be derived, not alone by the State of Kansas, but by the whole country adjacent thereto, by the development of the coal strata of the region, the Senate and House of Representatives of the State of Kansas, on the eighteenth day of February, eighteen hundred and sixty-eight, did concur in a joint resolution reciting the above, and respectfully requesting this Congress to act in the premises; and whereas the House of Representatives of the United States have heretofore passed an act directing the sale, in small tracts, of a body of land in said military reserve: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Leavenworth Coal Company, being the successors and assigns of Samuel Denman, Willia, H. Russell, and Thomas Ewing, junior, in the lease aforesaid, shall have the right to purchase

from the United States twenty acres of land lying in the military reserve at Fort Leavenworth, Kansas, and described as follows: Beginning at the intersection of the south line of the military reserve and the Missouri River, running northwardly thence along the west line of the said Missouri River, thence westwardly in a line parallel to the south line of the military reserve, thence southwardly in a line at right angles with the south line of the military reserve, thence eastwardly in the said south line of the military reserve to the point of beginning, the said lines to be run so as to make the form of the said twenty acres as nearly square as practicable. The said Leavenworth Coal Company shall pay therefor the sum fixed by the United States district judges of the State of Kansas, the eastern district of Missouri, and of the northern district of Illinois, whose reasonable expenses shall be paid out of any money in the treasury not otherwise appropriated; and said lease is hereby extended sixteen years from the passage of this act.

Sec. 2. And be it further enacted, That, upon the payment of the purchase-money for the same, the Secretary of the Interior is hereby directed to issue to the said Leavenworth Coal Company, and its successors and assigns, a patent for the above-described lands, which patent shall also grant to the said company, and its successors and assigns, the exclusive right to mine for all coal underlying the lands now comprised in the military reserve aforesaid.

Approved, July 20, 1868.

Exhibit C.

Chap. CCLXIX. -- An Act donating a Portion of the Fort Leavenworth military Reservation for the exclusive Use of a public Road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a strip of land one hundred feet in width along along the southern boundary of the Fort Leavenworth military reservation, in the State of Kansas, extending from the Missouri river to the western boundary thereof, be set apart for the perpetual and exclusive use of a public road; and the

said road shall be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops, or mails of the United States.

Sec. 2. And be it further enacted, That Congress may at any time amend or repeal this act.

Approved, July 27, 1868.

Exhibit D.

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Patent

Department Of The Interior. General Land Office. Washington. June 10, 1915.522083 B

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(General Land Office Seal) L.Q.C. Lamar, Recorder of the
(10c U.S.I.R. Stamp cancelled) General Land Office.

The United States Of America:

To all to whom these presents shall come, Greetings:

Whereas, the Act of Congress approved July 20th, 1868, to authorize the sale of twenty acres of land in the Military reservation at Fort Leavenworth, Kansas, is to the following effect.

That the Secretary of War, in behalf of the United States and in accorance with the previous practice of the War Department on the thirteenth day of November, in the year Eighteen hundred and sixty, did execute to Samuel Denman,

William H. Russel, and Thomas Ewing, Jr. and their assigns, a lease of twenty acres of land in the military reserve at Fort Leavenworth, State of Kansas, for the term of sixteen years thereafter, with a preference to them of an extension of the term, and with the exclusive right to mine for coal under the lands of said military reserve; and whereas the said lessees and their assigns accepted the said lease, and upon the faith thereof have prosecuted their mining operations under many difficulties at great expense, and have finally succeeded in striking the deep coal beds of that geological region after having expended their entire capital to the amount of forty thousand dollars; and whereas it is now discovered that the said lease is invalid because the Secretary of War was unauthorized in law to make the same by reason of which the said lessees are deprived of their right to proceed, and are threatened with the total loss of their money, and are without redress; and whereas in view of the incalculable benefit to be derived, not alone by the State of Kansas, but by the whole country adjacent thereto, by the development of the coal strata of the region, the senate and house of representatives of the State of Kansas, on the eighteenth day of February eighteen hundred and sixty eight, did concur in a joint resolution reciting the above and respectfully requesting this Congress to act in the premises; and whereas the House of Representatives of the United States have heretofore passed an Act directing the sale in small tracts of a body of land in said military reserve; Therefore,

"Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That the Leavenworth Coal Company, being the successors and assigns of Samuel Denman, William H. Russel and Thomas Ewing, Jr., in the lease aforesaid shall have the right to purchase from the United States twenty acres of land lying in the military reserve at Fort Leavenworth, Kansas, and described as follows: Beginning at the intersection of the south line of the military reserve and the Missouri river running northwardly, thence along the west line of the said Missouri river, thence westwardly in a line parallel to the south line of the military reserve, thence southwardly in a line at right angles with the south line of the military reserve, thence eastwardly in the said south line of the military reserve to the point of beginning, the said lines to be run so as to make the form,

of said twenty acres as nearly square as practicalbe. The said Leavenworth Coal Company shall pay therefor the sum fixed by the United States district judges of the State of Kansas, the Eastern district of Missouri, and of the Northern district of Illinois, whose reasonable expenses shall be paid out of any money in the treasury not otherwise appropriated, and said lease is hereby extended sixteen years from the passage of this Act.

Sec. 2. And be it further enacted, That upon the payment of the purchase money for the same the Secretary of the Interior is hereby directed to issue to the said Leavenworth Coal Company, and its successors and assigns, a patent for the above described lands, which patent shall also grant to the said Company, and its successors and assigns, the exclusive right to mine for all coal underlying the lands now comprised in the military reserve aforesaid.

And whereas, in connection with the said Act the following proceedings have been had as shown by the papers on file in the General Land Office:

First, a plat certified on the 22nd October, 1868, by the United States Surveyor, General of Kansas, indicating the location of the Fort Leavenworth Military Reserve and also an actual survey of the aforesaid twenty acres, which is situated in the South East corner of the said Reserve and in Township Eight South of Range twenty-two East of the 6th Principal Meridian in Kansas, being bounded and described as follows, to-wit: beginning at the stone monument on the South East corner of the Fort Leavenworth Military Reservation, being the intersection of the south line of the aforesaid Reserve with the right or west bank of the Missouri river, variation by Burts Solar Compass Eleven degrees east, thence North nine degrees west fourteen chains and fifty links along the west side of the Missouri river to a point on rocky bluff where a cross is cut on rock for corner, thence south eighty six degrees and fifty minutes west, thirteen chains and eighteen links to a point where is set a lime stone 28 x 8 x 8 inches marked U.S. on the North west side and L.C.C. on the South East side, thence South three degrees and ten minutes East fourteen chains and forty five links to a point on South line of Fort Leavenworth Military Reserve where a limestone 24 x 8 x 8 inches is set marked U.S. on the North

West side and L.C.C. on the North east side; thence North eighty six degrees and fifty-two minutes East fourteen chains and fifty two links along the South line of the Fort Leavenworth Military Reserve to the place of beginning, containing twenty acres more or less,

Second, The receipt dated December 23rd, 1868, of the Secretary of the Interior showing the payment to him of the sum of fourteen hundred dollars as the consideration money fixed by the United States District Judges according to the terms of the aforesaid Act, for the twenty acres above described.

Third. A transcript of the lease referred to in the preamble of the said Act of 20th July, 1868, in which as modified, it is declared in substance, that in consideration of a lease to said Company for sixteen years of twenty acres of land in the South east corner of said military reserve, with the preference in an extension of said lease together with the concession of the exclusive right of mining and selling such coal as may underlie the United States Military Reserve at Fort Leavenworth, said Company agree to furnish the Military Post, at said fort with coal as they may require from time to time for consumption at that Post, free of charge at the bank, and to pay to the Government of the United States a royalty of one fourth of one cent per bushel on each bushel of coal raised by them, except that furnished for Government purposes.

Fourth, The opinion dated 7th October, 1868, of the Attorney General of the United States, in which it is held as follows, that the Act simply authorize the lease, which was before invalid, to be made valid and effective for sixteen years thereafter, but certainly before it can have any binding force upon the lessees or their assigns, their consent thereto must be obtained, and that the Company on payment of the purchase money for the land, will be entitled to a patent therefor in fee, and with it a grant also of the exclusive right of mining the coal underlying the rest of the Reserve for the period limited by the terms of the lease authorized to be extended as mentioned, and that the grant of this privilege should accordingly embody provisions similar to those contained in the lease respecting the same privilege.

Fifth. The order dated December 22nd, 1868, of the Secretary of the Interior directing the patent to issue in accordance with the aforesaid opinion of the Attorney General and to be delivered when payment for the land shall have been made as provided in the Act, which payment has been duly made as hereinbefore indicated.

And whereas said Company have requested the issue of a patent granting to them and their assigns in fee, twenty acres of land and also the exclusive right to mine for all coal underlying the remaining lands comprised in said Military reservation at the date of said Act for the term of sixteen years therefrom with the preference in an extension upon the same terms, conditions and stipulations mentioned in the original lease.

Now Know Ye, That the United States of America in consideration of the premises and pursuant to the Act of Congress aforesaid, to the said opinion of the Attorney General, and the order aforesaid of the Secretary of the Interior Have Given and Granted and by these presents Do Give and Grant unto the said Leavenworth Coal Company and its successors and assigns the title in fee to the aforesaid twenty acres in the South east corner of the Fort Leavenworth Military Reserve and also the exclusive right to Mine for all coal underlying the remaining lands comprised at the date of said Act in the Military Reserve aforesaid for a period of sixteen years from the date of said Act of 20th July, 1868, reserving to the said Company as the assigns of the lessees the preference in an extension upon the express conditions nevertheless that said Company, its successors and assigns, shall furnish the United States Military Post at Fort Leavenworth with coal as they may require from time to time free of charge at the bank, and said Company shall pay as a royalty to the Government of the United States one fourth of one cent per bushel on each bushel of coal raised by them, except that furnished for Government purposes, and according to such regulations as may from time to time be prescribed by the Secretary of the Interior for the collection of said royalty, and on failure so to furnish said Post with coal or to pay said royalty, the right to mine granted by these presents shall thenceforth wholly cease and determine.

To have and to hold unto the said Leavenworth Coal Company, its successors and assigns, forever, the aforesaid twenty acres in fee simple, with the privilege of mining on the terms and conditions aforesaid for all coal underlying the lands comprised at the date of said Act in the Military Reserve aforesaid.

In testimony whereof, I, Andrew Johnson, President of the United States, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed,

Given under my hand at the City of Washington this twenty-eighth day of December in the year of our Lord one thousand eight hundred and sixty eight and of the Independence of the United States the Ninety-third.

By the President Andrew Johnson
Martin Buell Acting Recorder of the General
(Seal) Land Office Ad Interim

Recorded on the 13th day of March A.D. 1920, at 8:30 o'clock A.M.

M. E. Howard, Register of Deeds

Witnesses as to signatures of Stewart Van Vliet, Sam'l Denman & Thos. Ewing, Jr.
Benjamin C. Card
William Hickman

Witness as to signature of W. H. Russell
J. B. Simpson

Stewart Van Vleit (Seal)
Capt. A. Qr.
Samuel Denman (Seal)
Thos. Ewing, Jr. (Seal)
Wm. H. Russell (Seal)

I authorize Samuel Denman to sell and in my name assign and transfer at his discretion my interest in the Lease from the United States to Denman, Russell and Ewing of Twenty acres of the Fort Leavenworth Reservation and of the coal which may underlie the said Reservation.

Thos. Ewing, Jr.

In Consideration of One Dollar to me in hand paid by Frederick Hann of Leavenworth, Kansas I do hereby assign to

him the said Hann all the interest I have and own in and arising from the within lease on the following condition, viz: That he shall immediately recommence thd boring after coal heretofore made by me, Wm. H. Russell and Sam Denman and if successful and a workable vein of coal shall be found by him he shall as soon thereafter as he can make the said vein of coal available to him, either by working the same or by sale thereof, repay to me, my heirs and assigns the sum of One Hundred and eighty Dollars hitherto advanced by me in the said Borings after coal. In Witness Whereof I do hereto affix my hand by my attorney Sam'l. Denman whom I have authorized to dispose of my interest in the above.

Leavenworth City, April 17th, 1863 T. Ewing, Jr.
5¢ Int. Rev. Stamp by his atty. Sam Denman

In Consideration of One Dollar to me paid by Frederick Hann of Leavenworth, Kansas I do hereby assign to the said Hann whatever and all the interest I have in and arising from the within Lease on the condition following: That he shall recommence the borings after coal heretofore made by me and others, without unnecessary delay and if successful a workable vein of good coal shall be found by him, he shall as soon thereafter as he can make the said vein of coal available to him, either by sale thereof or working the same, to pay to me, my heirs or my assigns the sum of Five Hundred Dollars whitherto by me advanced in money and labor in the said borings after coal.

As Witness my hand and seal this April 17th, 1863 at Leavenworth City, Kansas.
5¢ Int.Rev.Stamp affixed. Sam Denman (Seal)

Recorded August 27th A.D. 1863 at 10:00 o'clock A.M.
W. S. Van Doren, Register of Deeds

Book Y - Page 72

Whereas on the First day of May A.D. 1860 Samuel Denman, William H. Russell and Thomas Ewing, Jr. by letter of that date addressed to Stewart Van Vliet assistant Quarter Master of the U.S. Army at Fort Leavenworth in the Territory of Kansas made a proposition to the General Government of the

United States in the words following to-wit: "We the undersigned do propose to run the risk and incur the expense of sinking a shaft in search of coal at a suitable point on the Missouri River and upon the lands of the United States Military Reserve at Fort Leavenworth, Kansas Ter. provided that the War Department will lease to us for the Term of Twenty years, with the privilege to us of Renewal for Twenty years longer on the same terms, the exclusive right of mining and selling such coal as may underlie the United States Reserve at Fort Leavenworth aforesaid, together with a right to use for the same term of time a sufficient quantity of land to be set apart to us lying on the West side of the Missouri River and at the intersection of the south line of the Reserve and the River for all mining purposes, machinery, dwellings, sheds, shops, warehouses, stables, stockcaralls, gardens and wharf privileges to be used by us during the term of time above named; and if we succeed in finding merchantable coal of sufficient thickness to work, we do further propose in consideration of the Lease and grant aforesaid, to furnish the Military Post at Fort Leavenworth aforesaid with coal as they may require from time to time for consumption at post, free of charge at the Bank so soon as it is raised in quantity sufficient and further should our experiment be unsuccessful or should we at any time during the term of the Lease abandon the premises or should we fail to comply with the Terms of the Lease, then the same shall be forfeited and the Government may resume possession of the premises, And we further agree to commence operations within six months after our proposition may be accepted and diligently prosecute the work to completion. And whereas the Secretary of War by letter dated September 6th A.D. 1860 addressed to the said Stewart Van Vliet assistant Quartermaster as aforesaid, accepted the above proposition on the Terms and conditions therein named, subject only to the following modification to-wit:

First: That the said Lease should run for Sixteen (16) years, reserving to the Lessees the preference in an extension and Second that the Lessees should further agree to pay to the Government of the United States one-fourth of one cent pr. bushel on each bushel of coal raised by them except that furnished for Government purposes. Now Therefore, the said Samuel Denman, William H. Russell and Thomas Ewing, Jr. do hereby assent to the modifications of the said proposition made by the Secretary of War as aforesaid and for themselves,

their heirs and assigns do contract with the Government of the United States to faithfully perform all the stipulations by them to be performed according to the terms of the said proposition and the modifications thereof above recited. And the said Stewart Van Vleit assistant Quarter Master of the U.S. Army under instructions from the War Department and on behalf of the Government of the United States hereby leases and grants to said Samuel Denman, William H. Russell and Thomas Ewing, Jr. their heirs and assigns, the rights, immunities and privileges, set forth on their proposition, subject however to the modifications and conditions prescribed as aforesaid by the Secretary of War and hereby set apart and designates, subject to the approval of the Secretary of War to and for the use of the said Lessees, their heirs and assigns, as provided in the above recited contract. Twenty acres on the Surface of said Military Reserve in a form as nearly square as practicable, bounded on the East by the Missouri River and on the South by the southern line of the said Reserve.

As Witness our hands and seals at Fort Leavenworth, Kansas Territory this Thirteenth day of November A.D. 1860.

Exhibit 4

RESERVATION

(Page 33)

FORT LEAVENWORTH KANSAS.

U.S. Penitentiary Act Of Congress Approved May 31, 1929.

REVISED JUNE 5, 1941
TO SHOW NEW RECEPTION CTR.

N. 0°34'30" W 2312.3'

N 0°07'14" E 6970.9'

Air Corps Landing Field & Hangar

MISSOURI RIVER

Railroad Rights of Way

Missouri Pacific R.R. Right of Way, not to exceed 100' in width granted originally to Leavenworth Atchison & Northwestern R.R. by Act of Congress approved July 27, 1868

Chicago Rock Island & Pacific R.R. Right of Way not to exceed 100' in width granted originally to Leavenworth & Des Moines R.R. succeeded by Chicago & Southwestern R.R., succeeded by Chicago, R.I. & Pac. R.R. (July 27, 1868)

Leavenworth Kansas & Western R.R. (Owned by Union Pacific) Right of Way, width not specified, granted originally to Kansas Central R.R. in 1871.

Leavenworth Northern & Southern R.R. (Owned and operated by Santa Fe) Right of Way not to exceed 100' in width granted by Act of Congress approved July 3, 1886.

Leavenworth Rapid Transit R.R. Right of Way 50' wide with Depot grounds granted by Act of Congress approved Sep. 10 1888.

Revocable Licenses of Railroads

Kansas City Western R.R. (Electric) Right of Way width not specified, granted to Kansas City Leavenworth R.R. by Sec. of War Aug 25, 1900

Leavenworth, Kansas & Western R.R. Right of Way for spur track to Federal Penitentiary granted by Sec. of War in 1908

Change of track connections at Federal Penitentiary approved by Sec. of War in letter dated Dec. 22, 1910, to Attorney General.

Note Bearings are true

Scale in Feet

Office Of The Constructing Quartermaster
Fort Leavenworth, Kans.

BOUNDARY MONUMENTS

- FOUND IN POSITION
- NOT FOUND
- BOUNDARY NOT MARKED
- BROKEN BUT IN POSITION

1552.

Legend

Adjacent to City of Leavenworth, Kan.
Reservation declared by Executive Order Oct 10, 1854
Diminished by many grants and concessions.
Timber Reservation declared June 21, 1838
Area 10 miles square
Porting relinquished July 12, 1843
Present area of Timber Reserve about 939.37 acres.
Present area of Post Reserve about 6029.81 acres
Jurisdiction ceded by Legislature of Kansas Feb 22, 1875
Post established in 1827.
Act of June 10, 1896, sets apart that portion (305 acres) south of the red line for new penitentiary buildings
Latitude 39°21'
Longitude 94°55'
Revocable licenses dated Sep 3, 1909 granted to E.W. Snyder and others to construct operate and maintain a road on the east bank of the Missouri River extending from south side of U.S. Timber Res. to eastern approach of Fort Leavenworth Bridge

Legend (continued)

3/154 acres purchased in 1909 as addition to Reservation on west
Present area of Post Reserve 6447 Acres
Agreement dated Dec. 10, 1910 and Jan 15, 1911, between the Union Pacific R.R. and the Missouri Pacific R.R. respectively and the United States, by which the latter can lay a 24" sewer on Right of Way of these railroads

Exhibit 5.

A-146

(P.24 - Case) Murphy et al. vs. Love

Exhibit J.
State of Kansas
Office of Director
of
Alcoholic Beverage Control
Bonded Alcoholic Liquor Carrier Permit No. 178

This certifies that W. B. Love d/b/a Love Transfer of 727 West Thomas, Weston, Missouri, is a bonded alcoholic liquor carrier effective February 23rd, 1955, under the Kansas Liquor Control Act.

State Director Alcoholic Beverage Control
Chas. W. Pratt
Director.

(Seal)

Exhibit K.

Date October 5/55
Order No: _____

Invoice

The Austin Store
Since 1933
Beverly, Missouri

To Love Transfer As Agent For:

Purchaser Maj. B. C. Snow, Jr.,
Address 322-4 Cody Lane,
City Ft. Leavenworth, Kansas.

6 cases assorted liquors

Mdse. Total	210.78
COD Fee	
Freight	1.91
Total	212.69

Prepaid

The Above Merchandise Received in Good Condition
Signed _____

26] [Findings of Fact and Conclusions of Law.]

The Court now makes the following "Findings of Fact" and "Conclusions of Law" in the above entitled case:

Findings Of Fact

1. Lands on which Fort Leavenworth is situated were acquired by the United States in the Louisiana Purchase of 1803.

2. Fort Leavenworth was established as a military post in 1827.

3. The Fort Leavenworth Military Reservation was created by executive order on October 10, 1854.

4. The State of Kansas was organized into a territory by act of Congress approved May 30, 1858.

5. The State of Kansas was admitted as a state in the union on equal footing with the original states January 29, 1861.

6. By act approved July 20, 1868, Congress authorized the sale of twenty (20) acres of land from the southeast portion of the Fort Leavenworth Military Reservation to the Leavenworth Coal Company. Said act directed the Secretary of the Interior to issue a patent for the said twenty (20) acres and also to grant to the company, its successors and assigns, the exclusive right to mine all of the coal underlining the remaining lands comprising the military reservation aforesaid.

27] 7. By act approved July 27, 1868, Congress set apart a strip of land one hundred (100) feet wide along the south boundary of Fort Leavenworth Military Reservation, extending from the Missouri River to the western boundary thereof for the perpetual and extensive use as a public road. Said road to be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops or mails of the United States.

8. By patent dated December 28, 1868, the United States conveyed to the Leavenworth Coal Company "The aforesaid twenty (20) acres and fee simple, with the privilege of mining on the terms and conditions aforesaid" for "all coal underling the remaining lands comprised in the deed of said act in the military reservation aforesaid for a period of sixteen (16) years from the date of said act on the 20th day of July, 1868."

9. Early in the year 1955 a new Municipal Leavenworth Toll Bridge was opened and the old Fort Leavenworth Military Reservation Bridge was closed by agreement.

10. The western approach to the new municipal bridge crosses a portion of the twenty (20) acre tract deeded to the Leavenworth Coal Company by the patent described in Paragraph 8 above and across the 100' strip which was subject of the easement in Finding 7.

11. That one W. B. Love, doing business as under the firm name and style of the Love Transfer Company of Weston, Missouri, operated a common carrier business transporting property by motor vehicle from certain parts of the State of Missouri to certain parts of the State of Kansas. The said W. B. Love was duly licensed under the Interstate Commerce Commission's rules and regulations and under the Kansas Corporation Commission's rules and regulations.

12. The said W. B. Love, Plaintiff, doing business as Love Transfer Company (Weston, Missouri) holds and was operating under on October 5, 1955, and prior thereto permit of State of Kansas "Bonded Alcoholic Liquor Carrier Permit No. 178 issued February 23, 1955, by the Director of the Alcoholic Beverage Control of Kansas.

28] 13. At 9:00 a.m. on October 5, 1955, Agents of the Kansas Alcoholic Beverage Control, at a point on the western approach to the new municipal bridge aforesaid which was within the twenty (20) acre tract originally deeded to the Leavenworth Coal Company in 1868 as described and on the 100' strip referred to in Finding 7 hereinabove, intercepted a 1951, 1/2 ton International truck bearing 1955 Missouri license plates No. MO 241,867; Fort Leavenworth No. 6087; KCC No. 59,707; KCC No. 50,472; and Alcoholic Beverage Control

permit card No. 178, dated February 23, 1955; owned by the Love Transfer Company of Weston, Missouri, which had proceeded in a westerly direction across the new municipal bridge to the point of interception and at that time was hauling, among other things, the following described alcoholic liquor consigned from the Austin Liquor Store of Beverly, Missouri, and consigned to Major B. C. Snow, Jr., of 322-4 Cody Lane, Fort Leavenworth, Kansas, to-wit:

4	fifths House of Lords Scotch Whiskey
12	fifths Hiram Walker Gin
16	fifths Barclay's Gold Label Whiskey
34	fifths McCormick Weston Springs Whiskey
66	bottles total

Said alcoholic liquor did not have affixed thereon each mark or stamp showing payment of the Kansas Gallonage Tax. That the State of Missouri Sales Tax had been paid on the alcoholic liquors seized from Plaintiff on October 5, 1955, prior to said seizure and prior to said liquors leaving the State of Missouri. That all required Excise or Inspection Stamps or Labels required as to gallonage under Regulation #7 of the Missouri Department of Liquor Control had been properly purchased and affixed to the alcoholic liquors seized from Plaintiff prior to such seizure on October 5, 1955. That the Director of Alcoholic Beverage Control, Chas. W. Pratt, is properly and legally appointed under the Kansas Statute. That the Agents making the arrest were the legally and qualified agents of the said Director of Alcoholic Beverage Control.

14. That the arrest and seizure referred to in the above Finding took place at a point within the jurisdiction of the State of Kansas.

29] 15. Immediately after the interception, as is above set out, the Alcoholic Beverage Control agents arrested one Richard Cooper Winburn, the driver of the Love Transfer truck in question, and seized the alcoholic liquor above described, taking both the driver and the alcoholic liquor to the office of the Sheriff of Leavenworth County, Kansas. That on October 5, 1955, Richard Cooper Winburn was the duly authorized, acting agent and employee of the Plaintiff and at such time was acting in such capacity. That invoices,

Bills of Lading and Freight Tickets accompanied the shipment of alcoholic liquors enroute from Austin's Liquor Store, Beverly, Missouri, to Major B. C. Snow, Jr., 322-4 Cody Lane, Fort Leavenworth, Kansas, on October 5, 1955, at the time of such seizure from Plaintiff's truck. All of which were introduced in evidence herein.

16. Truck driver Winburn was charged with the possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas tax stamps thereon in violation of Section 41-407 of the Kansas Alcoholic Beverage Control Act and with evasion of the Kansas tax upon the liquors above described. Winburn has been arraigned and is now awaiting trial in the District Court of Leavenworth County, Kansas.

17. On October 20, 1955, the said W. B. Love, doing business as the Love Transfer Company of Weston, Missouri, was cited to appear on November 17, 1955, before the State Director of the Alcoholic Beverage Control of Kansas to show cause why his permit as a Bonded Alcoholic Liquor Carrier should not be suspended or revoked for violation of sections 41-407 and 41-408 of the Kansas Alcoholic Beverage Control Act, said hearing not having been held at this time.

18. That the shipment of the alocholic liquor referred to herein constituted an Interstate Shipment under the Commerce Clause of the Constitution of the United States.

19. That no taxes were due or collectable by the State of Kansas on the liquor seized and involved in this action.

20. That a Mandatory Injunction as prayed for in the Complaint herein should issue under the seal of the Clerk of this Court forthwith.

30] 21. That the liquor seized herein should be returned by the United States Marshall to the petitioner.

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Conclusions Of Law

1. That the Court has jurisdiction of the parties and the subject matter of the litigation.

2. That the arrest and seizure complained of took place within the jurisdiction of the State of Kansas.

3. That the seizure constituted an interference with and a burden upon an interstate shipment and was without legal authority.

4. That the State of Kansas or its agents have no authority to levy or collect any tax on liquor seized and involved in this action.

5. That the plaintiff is entitled to relief prayed for in the complaint.

Delmas C. Hill
Judge

Filed Jan. 7, 1957.

31] Journal Entry Of Judgment.

The above entitled and numbered cause coming on to be heard on the 30th day of July, 1956, and all parties thereto having appeared by counsel, and the Court having heard the pleadings, the evidence, and arguments of counsel the cause is submitted by the parties upon written Stipulation and upon due consideration thereof it appearing to the Court that the plaintiff should be granted the relief prayed for in its complaint, it is therefore on this 7th day of January 1957,

Ordered, Adjudged and Decreed that a Mandatory Injunction issue by this Court and that the defendants, their officers, agents and employees, be permanently and perpetually enjoined and restrained from interferring with the plaintiff, W. B. Love, doing business as the Love Transfer Company, Weston, Missouri, a common carrier, from transporting the liquor described in the Complaint herein from the State of Missouri to its destination on the Fort Leavenworth Military

Reservation. That the United States Marshal of Kansas return to the plaintiff the alcoholic liquors in his possession which were seized in this action.

That the defendants, their officers, agents and employees be, and they are hereby further restrained and perpetually enjoined from seizing, or interferring with the petitioner in his transporting, as a common carrier, like shipments of alcoholic liquors, from the State of Missouri to the Fort Leavenworth Military Reservation.

32] It is further Ordered, Adjudged and Decreed that the Findings of Fact and Conclusions of Law filed by the Court herein constitute and are a part of the judgment and Decree of the Court in this cause.

It Is Further Ordered, Adjudged and Decreed that the defendant, Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas, pay the costs of these proceedings to be taxed by the Clerk of this Court, and that execution issue for the same.

Dated January 7th, 1957.

Delmas C. Hill
Judge

Filed Jan. 7, 1957.

33] Order Substituting Parties.

On this 22nd day of January, 1957, it is by the Court ordered that W. E. Murphy be and he is hereby substituted as party defendant for Charles W. Pratt, Director of the Alcoholic Beverage Control and that John Anderson, Jr., be and he is hereby substituted as party defendant for Harold R. Fatzer, Attorney General of the State of Kansas.

Delmas C. Hill
Judge

Entered Jan. 22, 1957.

34] Notice Of Appeal.

Notice is hereby given that the defendants above named, and each of them, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment granting an injunction in favor of plaintiff and against defendants, entered in this action on the 7th day of January, 1957.

Dated January 21, 1957.

John Anderson, Jr.,Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants.

Filed Jan. 22, 1957.

35] Bond For Costs On Appeal Secured By Cash Deposit.

The defendants, having filed Notice of Appeal from the order of this Court entered on the 7th day of January, 1957, to the United States Court of Appeals for the Tenth Circuit, hereby deposit in the registry of said Court the sum of $250, subject to the orders of the Court, as security that said appellants shall prosecute their said appeal to effect, and that said appellants shall pay to the appellee all costs if the appeal is dismissed, or the judgment affirmed, or such costs as the appellate court may award if the judgment is modified.

John Anderson, Jr., Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants

Filed Feb. 5, 1957.

36] Statement Of Points Pursuant To Rule 75 (d) Of The Rules Of Civil Procedure.

The appellees hereby state the points on which they intend to rely on their appeal are as follows:

(1) The Court erred in finding as a matter of fact that the shipment of alcoholic liquor referred to herein constituted an interstate shipment under the Commerce Clause of the Constitution of the United States.

(2) The Court erred in finding as a matter of fact that no taxes were due or collectable by the State of Kansas on the liquor seized and involved in this action.

(3) The Court erred in finding as a matter of fact that a mandatory injunction prayed for in the complaint herein should issue under the seal of the clerk of this court forthwith.

(4) The Court erred in finding as a matter of fact that the liquor seized herein should be returned by the United States Marshal to the petitioner.

(5) The Court erred in its conclusion that said court has jurisdiction over the parties and subject matter of this litigation.

(6) The Court erred in its conclusion that the seizure herein constitutes an interference with and a burden upon an interstate shipment and was without legal authority.

37] (7) The Court erred in concluding as a matter of law that the State of Kansas or its agents have no authority to levy or collect any tax on liquor seized or involved in this action.

(8) The Court erred in granting judgment to the plaintiff and against the defendants.

John Anderson, Jr., Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants.

Filed Feb. 8, 1957.

40] Clerk's Certificate.

I, Harry M. Washington, Clerk of the United States District Court for the District of Kansas, do hereby certify the within and foregoing to be the original record and proceedings in case No. T-1268, entitled W. B. Love, an individual doing business as The Love Transfer Company, Weston, Missouri, Petitioner, vs. F. E. Wells, acting Director of Alcoholic Beverage Control of Kansas; Harold Fatzer, Attorney General of the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas and James E. Fussell, County Attorney of Leavenworth County, Kansas, Defendants, in said court as is deemed necessary for record on appeal on file herein.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 26th day of February, 1957.

(Seal)

Harry M. Washington, Clerk
By Carol Brichell
Deputy

Filed United States Court of Appeals Tenth Circuit, March 4, 1957, Robert B. Cartwright, Clerk.